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No. 95109-8

SUPREME COURT
OF THE STATE OF WASHINGTON

HEALTH PROS NORTHWEST, INC., a Washington corporation,

APPELLANT,

v.

THE STATE OF WASHINGTON and its DEPARTMENT OF CORRECTIONS,

RESPONDENTS.

**APPELLANTS HEALTH PROS NORTHWEST, INC.'S
REPLY BRIEF**

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ORIGINAL

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PORTAL

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I. INTRODUCTION

Health Pros Northwest, Inc. (hereinafter "Health Pros") made a public records request to the Department of Corrections (hereinafter "agency"). Health Pros sought records related to the negotiation, performance, and termination of a contract that Health Pros had entered into with the agency whereby Health Pros supplied medical personnel to various agency facilities.¹

The Legislature has required agencies to respond "promptly"² to public records requests and to take "the most timely possible actions on requests for information."³ The Legislature has further required that, where the agency does not respond by producing all records within five business days, the agency must provide "a reasonable estimate of the time that the agency will require to respond to the request."⁴

Here, the agency **refused** to provide Health Pros with such an estimate. The agency refused to do so: (1) within five business days of its receipt of the request;⁵ (2) in response to Health Pros' inquiry after the agency began producing documents in installments;⁶ and (3) in response

¹ CP 15-18.

² RCW 42.56.080; .520.

³ RCW 42.56.100.

⁴ RCW 42.56.520(1)(c).

⁵ CP 23-25.

⁶ CP 28-30.

to an interrogatory formally asking the agency for this information six months after the request.⁷

Although the agency refused to provide an estimate of when it would produce all records responsive to Health Pros' public records request, the agency is responding at a pace at which the agency will not fully respond to Health Pros' request **for 12 years**.⁸

Upset with the agency's failure to provide an estimate of when it would fully respond, and the pace at which the agency was producing responsive documents, Health Pros filed a lawsuit in which it invoked RCW 42.56.550(2). This statute provides:

Upon the motion of any person who believes that an agency has not made a reasonable estimate of the time that the agency requires to respond to a public record request, the superior court in the county in which a record is maintained may require the responsible agency to show that the estimate it provided is reasonable. The burden of proof shall be on the agency to show that the estimate it provided is reasonable.

Under the plain language of this statute, the trial court should have required the agency to provide an estimate of the time the agency required to fully respond to Health Pros' public records request. The trial court

⁷ CP 61 (Response to Interrogatory No. 3).

⁸ CP 229 (Agency Brief, p. 22, lines 12-14) ("The most telling numbers are the 15,000 pages of responsive documents gathered, reviewed and produced so far [i.e., in the approximately six months since Health Pros submitted its record request], and the 350,000 pages of records identified as being potentially responsive that still need to be reviewed."). See also Health Pros' Opening Brief, p. 9.

should have required the agency to demonstrate that its estimate was a reasonable estimate of the time the agency required to respond in light of the Legislative mandate that the agency act "promptly." And—assuming the agency honestly admitted that it did not intend to respond to Health Pros' request for 12 years—the Court should have held the agency's estimate not to be reasonable.

This Court should reverse and remand with instructions that the trial court do what the Legislature plainly intended it to do: require the agency to provide an estimate of the time required to fully respond to Health Pros' public records request, and then require the agency to justify that estimate as reasonable.

II. ARGUMENT

A. The Court should construe the phrase "a reasonable estimate of the time which the agency requires to respond to the request" as requiring the agency to provide a reasonable estimate of the time it requires to **fully** respond to the records request.

In order to resolve this case, the Court must construe the meaning of the same phrase employed by the Legislature in both RCW 42.56.520(1)(c) and in RCW 42.56.550(2).

RCW 42.56.520(1)(c) requires an agency that does not respond to a record request by producing responsive records or denying the request within five working days to:

Acknowledg[e] that the agency . . . has received the request and provid[e] **a reasonable estimate of the time the agency . . . will require to respond to the request.**

(Emphasis added).

RCW 42.56.550(2) grants trial courts the power to review such estimates. It provides, in pertinent part:

Upon the motion of any person who believes that an agency has not made **a reasonable estimate of the time that the agency requires to respond to a public record request . . .** the superior court in the county in which a record is maintained may require the responsible agency to show that the estimate it provided is reasonable. The burden of proof shall be on the agency to show that the estimate it provided is reasonable.

(Emphasis added).

Here, the Court has been presented with three competing constructions⁹ of this language:

- Health Pros asserts that the Court should continue to construe this language the way courts, authorities, and agencies all construed and applied this language for the first 38 years of the Public Records Act's existence—as requiring agencies to provide an estimate of the time they require to **fully** respond to a public records request.
- Division II of the Court of Appeals, in *Hobbs v. State*, 183 Wn.App. 925, 335 P.3d 1004 (2014), construed this phrase as requiring an agency to provide an estimate only of when

⁹ See Agency Brief, p. 14 ("The trial court, Health Pros, and the department all interpret the meaning of RCW 42.56.520(1)(c) differently.").

it expects to provide an **initial** set of records. The trial court felt obligated to follow this Division II decision.¹⁰

- The agency, in its appellate brief, offers a third construction. The agency construes the word "respond" as permitting it to indefinitely postpone its obligation to fully respond to a records request.

The Court should resolve this dispute by employing normal rules of statutory construction. The Court should ascertain the Legislature's intent by: (1) examining the plain meaning of the language it employed; (2) examining how each construction fits with the purpose underlying the Public Records Act; (3) examining which construction fits best under each of the statutes in which the Legislature chose to employ this language; and (4) considering the history of how this language has in fact been construed and applied over the Public Records Act's history.

These factors all unequivocally point to a single conclusion—the Court should continue to construe this language as requiring an agency to provide an estimate of the time the agency requires to **fully** respond to a public records request.

¹⁰ See CP 251 (Judgment, ¶3) ("The Court DECLARES that RCW 42.56.520(3) [now 42.56.520(1)(c)], as construed by the Court of Appeals in *Hobbs v. State*, 183 Wn.App. 925, 335 P.3d 1004 (2014), only requires an agency to provide an estimate of when it will produce its *first* installment of records responsive to the public records request, and does not require the agency to produce an estimate of when it will *finish* producing records responsive to such a request, such that the Court has no jurisdiction to compel the agency to produce such an estimate.").

B. The Legislature has required agencies to provide a reasonable estimate of the time they require to **fully** respond to a public records request.

The Court should construe the statutory language as requiring an agency to provide an estimate of the time required to **fully** respond to a public records request. Only this construction comports with the language's plain meaning, comports with the purpose underlying the Public Records Act, makes sense in both contexts in which the Legislature employed this language, and is consistent with how Washington authorities and agencies have long understood and applied this language.

First, the Court should construe statutory language according to its plain meaning.¹¹

In RCW 42.56.520(1)(c) the Legislature states that "the agency must provide a reasonable estimate of the time the agency . . . will require to respond to the request." The most natural reading of the object of the phrase "a reasonable estimate" is as referring to **all** of what the Legislature has described. Therefore, an agency must provide a reasonable estimate of the time that the agency requires to respond to **all** of a public records request. The plain meaning of this language supports Health Pros' construction of it.

¹¹ See, e.g., *Koenig v. City of Des Moines*, 158 Wn.2d 173, 181 ¶11, 142 P.3d 162 (2006); *Zink v. City of Mesa*, 162 Wn.App. 688, 709, 256 P.3d 384 (2011), review denied 173 Wn.2d 1010 (2012). See also Agency Brief, p. 15, citing *Yousoufian v. Office of Ron Sims*, 152 Wn.2d 421, 437, 98 P.3d 463 (2004).

Second, a court should construe this language in light of the legislative purpose underlying its enactment.¹²

The Legislature itself has articulated its purpose in enacting the Public Records Act. The Act's purpose is to ensure "full access to information concerning the conduct of government on every level"¹³ by ensuring that agencies provide prompt responses to public records requests.¹⁴

The Legislature has declared that it is improper for agencies to usurp the right to decide what is good for the people to know and what is not good for them to know.¹⁵ Accordingly, the Legislature has directed that: "Courts shall take into account the policy of this chapter that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others."¹⁶ The Legislature has specifically declared that the Public Records Act "shall be liberally construed and its exemptions narrowly construed" to promote these purposes.¹⁷

¹² *G-P Gypsum Corp. v. Department of Revenue*, 169 Wn.2d 304, 309-10 at ¶10-11, 237 P.3d 256 (2010); *Koenig*, 158 Wn.2d at 181, ¶11.

¹³ RCW 42.17A.001(11).

¹⁴ See RCW 42.56.080; .520 (requiring agencies to respond "promptly" to public records requests); RCW 42.56.100 (requiring agencies to adopt rules providing for "the most timely possible actions on requests for information.").

¹⁵ RCW 42.56.030.

¹⁶ RCW 42.56.550(3).

¹⁷ RCW 42.56.030.

In light of these purposes, the Court should construe the statutory language at issue in this case as requiring the agency to provide an estimate of the time the agency requires to produce **all** records responsive to a public records request. Only such a construction comports with the Legislature's purpose of ensuring that agencies provide broad and prompt responses to public records requests, the Legislature's clearly articulated policy underlying the Act.

Third, when the Legislature uses identical language in two closely related statutes, a court should interpret the meaning of that language in light of its use in both statutes, and attribute the same meaning to the same language.¹⁸

Here, the Legislature has used identical statutory language in two different, but closely related, statutes. The Legislature has required agencies to provide public records requestors, in response to a submitted public records request, a "reasonable estimate of the time the agency requires to respond to their public records request." RCW 42.56.520(1)(c). In addition, the Legislature has conferred jurisdiction on superior courts to review the reasonableness of the estimate which the agency must provide:

¹⁸ *Public Utility Dist. No. 1 v. State*, 182 Wn.2d 519, 537-38 at ¶30, 342 P.3d 308 (2015).

Upon the motion of any person who believes that an agency has not made a reasonable estimate of the time that the agency requires to respond to a public record request . . . the superior court in the county in which a record is maintained may require the responsible agency to show that the estimate it provided is reasonable.

RCW 42.56.550(2).

Construing this language as requiring the agency to provide an estimate of the time it requires fully to respond to a public records request makes sense in the context of both statutes. It means that the Legislature, in order to fulfill its objective of ensuring that agencies provide broad and prompt responses to public records requests, has (1) required agencies to provide requestors with an estimate of the time the agency requires to **fully** respond, ensuring the agency moves promptly to fulfill the records request; and (2) given superior courts full authority to review the reasonableness of the estimate which an agency has provided of the time required to **fully** respond to a public records request, thereby giving superior courts jurisdiction to ensure the agency is fulfilling the request promptly.

This construction also rationalizes and harmonizes RCW 42.56.550(1) and .550(2)—the two statutes in which the Legislature has granted superior courts jurisdiction to review public records requests. First, the Legislature has given superior courts the authority to review the

reasonableness of the estimate the agency provides of the time needed to fully respond to the request. This permits courts to ensure the agency fulfills the request promptly. RCW 42.56.550(2).

Once the agency has taken final action in response to a records request by providing all the records it intends to provide, the Legislature then has given superior courts the authority, pursuant to RCW 42.56.550(1), to review the substance of the agency's response, in order to address issues such as the thoroughness of the search the agency conducted to identify responsive records, the manner in which it has produced the records, and the propriety of material withheld from the produced records on the ground of exemption.

In sum, construing the statutory language as requiring agencies to estimate the time they require to fully respond to a public records request makes sense of, and harmonizes, all the relevant statutes.

Finally, this is exactly how courts, legal authorities, and agencies utilizing the Act have consistently construed and applied it for the first 38 years of the Public Records Act's existence.

The Public Records Act was first adopted in 1976. Prior to the 2014 court decision in *Hobbs*, this is how courts applied the Public Records Act. See, e.g., *Doe I v. Washington State Patrol*, 80 Wn.App. 296, 303, 908 P.2d 914 (1996) (Because agency did not comply with the

Public Records Act by providing an estimate of when it would fully respond to the request, agency violated Act); *West v. Department of Natural Resources*, 163 Wn.App. 235, 244 ¶17, 258 P.3d 78 (2011) (Where agency failed to provide an estimate of when it would fully respond to public records request within five business days, agency violated Public Records Act; "The PRA could not be clearer on the requirements imposed upon agencies following a request").

This is also how the Washington State Attorney General, in his model rules for implementing the Act,¹⁹ construed this language:

Within five business days of receiving a request, an agency must . . .

(b) Acknowledge that the agency has received the request and provide a reasonable estimate of the time it will require to **fully** respond; . . .²⁰

Similarly, this is how the authors of the Washington Public Records Act Deskbook construed this language:

The agency must provide its initial response within five days. When the agency cannot complete its response within that five-day period and needs no clarification, the agency can take a "reasonable" amount of time to complete the request, **but must provide this "reasonable" time estimate to the requestor.**

. . .

¹⁹ See RCW 42.56.570(2) (Legislature charged Attorney General with obligation to enact model rules).

²⁰ WAC 44-14-04003(4) (emphasis added).

The reasonable time estimate should include both the date of the first installment, if there will be installments, **and the date the agency estimates the request will be completed.**²¹

For the first 38 years of its existence, courts, authorities and agencies consistently exhibited a uniform understanding of the statutory language. Following its plain meaning, construing it in light of the purpose underlying the Act, and applying a construction that makes sense in every context in which this language is used, they all construed this language as requiring agencies to provide an estimate of the time the agency required to **fully** respond to a public records request.

This is how the Court should continue to construe this language.

C. In *Hobbs*, the Court of Appeals incorrectly construed this language as referring only to the time the agency required to provide an **initial** installment of records.

Division II of the Court of Appeals in *Hobbs v. State*, 183 Wn.App. 925, 335 P.3d 1004 (2014), in an otherwise well-reasoned opinion, incorrectly departed from this long-standing construction.

In *Hobbs*, the Court of Appeals held that, where an agency produces records in installments, an agency need only provide the records requestor an estimate of when it will produce its **initial** installment of responsive records:

²¹ *Public Records Act Deskbook: Washington's Public Disclosure and Open Public Meeting Laws* at §6.5 at p. 6-22 (2d ed., 2014) (emphasis added).

[I]t is sufficient for the initial response to include only a reasonable estimate of the time it will take the agency to produce **the first installment** of responsive records.

183 Wn.App. at 942, ¶35 (emphasis added).²² The Court should overrule *Hobbs*, and construe the statutory language as requiring agencies to provide an estimate of when they intend to fully respond to a public records request.

The *Hobbs* court purported to justify its radically new construction of this language by asserting that its construction was consistent with its plain meaning.²³ It is not.

As noted,²⁴ the plain reading of the phrase "reasonable estimate of the time the agency requires to respond to a public records request" is as referring to **all** of what the Legislature described: the time the agency will require to **fully** respond to a public records request. It is not to read this phrase as referring only to a very small part of what the Legislature has described—the time required for the agency to provide an initial installment of documents responsive to the request. The *Hobbs* court erred in ignoring this language's plain and clear meaning.

²² The trial court, following *Hobbs*, interpreted this language as requiring an agency only to provide an estimate of the date it intends to provide an initial set of records in response to a public records request. CP 251 (Judgment, ¶3). See also Agency Brief, p. 14.

²³ 183 Wn.App. at 943, ¶37.

²⁴ See p. 6, *infra*.

Moreover, the *Hobbs* court did not consider whether its construction of this language was consistent with the Legislature's purpose in adopting the Public Records Act.²⁵ It is not.

As noted,²⁶ the Legislature enacted the Public Records Act in order to ensure that agencies provide broad and prompt access to public records. The *Hobbs* court's construction of this language—as requiring agencies only to provide an estimate of the time required to produce the first installment—undercuts this purpose. Its construction relieves agencies of any obligation to determine or move towards fulfillment of the balance of a records request promptly.

Third, the *Hobbs* court did not appear to even be aware of the fact that the Legislature used the exact same language in RCW 42.56.550(2).²⁷ In fact, the *Hobbs* court's construction of this language eviscerates the jurisdiction which the Legislature granted superior courts by that statute.

Under *Hobbs'* construction of this language, when an agency chooses to produce records in installments, trial courts have authority to review **only** the agency's estimate of the time the agency requires to produce its **initial** installment of records. As this trial court held, following *Hobbs*, the court has no authority to address or review the

²⁵ See 183 Wn.App. at 941-43 (never addressing the purpose underlying the Public Records Act).

²⁶ See p. 7-8, *infra*.

²⁷ *Id.* (never discussing identical phrase in RCW 42.56.550(2)).

promptness with which the agency produces subsequent installments of records.²⁸

The *Hobbs* court's construction of this language thus results in a "jurisdictional gap." Construing this language as required by *Hobbs*, superior courts have jurisdiction to review only the promptness with which an agency produces the *initial* installment of responsive documents. They have no jurisdiction to further review the promptness or pace at which an agency produces additional documents. This "jurisdictional gap" permits an agency to indefinitely delay—and thus *de facto* deny—responding to a public records request by the expedient of producing small amounts of records in installments over a very lengthy period of time.

That is exactly what this agency is doing to Health Pros' request in this case. The agency is producing records in installments at a pace at which it will not fulfill Health Pros' public records request for 12 years—long after the requested records will have lost all meaning and value.²⁹

Finally, the *Hobbs* court, in its decision, provided no evidence that it was aware how utterly inconsistent its construction of this language was with the way this language had been uniformly construed and applied up to the time of its decision. As noted, both the Washington State Attorney General, and the authors of the Washington Public Records Act Deskbook,

²⁸ CP 251 (Judgment, ¶3).

²⁹ See Footnote #8, *infra*.

reflecting the actual practice of courts and agencies, had construed this language as requiring agencies to provide an estimate of the date that the agency expected to **fully** respond to a public records request. The *Hobbs* court did not suggest it was even aware of these authorities, much less explain its decision to so radically depart from them.

The *Hobbs* court's construction of the language of RCW 42.56.520(1)(c) is so obviously defective that **not even the agency purports to defend it in its brief.**³⁰ Instead, the agency offers its own, equally novel—but quite differently focused—construction of the statutory language.

The Court should overrule this aspect of Division II's decision in *Hobbs*. The Court should hold that RCW 42.56.520(1)(c) and RCW 42.56.550(2) require agencies to provide an estimate of the time the agency requires to **fully** respond to a public records request.

D. The agency's construction of this language is circular, and equally inconsistent with the purpose of the Legislature in enacting the Public Records Act.

Rather than defending the *Hobbs* court's construction of this language, the agency offers its own construction. But the agency's newly-advanced construction also does not comport with the plain meaning of these statutes, is also inconsistent with the Legislature's purpose in

³⁰ Agency Brief, p. 17.

enacting the Public Records Act, also does not make sense when applied to RCW 42.56.550(2), and also is utterly inconsistent with how the Act has been historically applied.

The agency's construction focuses upon the word "respond."³¹ Quoting Webster's Third New International Dictionary, the agency acknowledges that the plain meaning of the word "respond" is to "make an answer."³²

This "plain meaning" supports the traditional construction of the statutory language to which Health Pros asserts the Court should adhere. The Legislature, in requiring an agency to provide an "estimate of the time required to respond to a public records request" plainly refers to the time required to "answer" that request—either by producing, or by refusing to produce, the records requested.

Because the plain meaning of the word "respond" supports Health Pros' construction of this language, the agency asserts that the Court should NOT interpret this language according to its plain meaning. Instead, the agency asserts that the Court should hold that the word

³¹ See Agency Brief, p. 16 ("The key word in the statutory provision is "respond" . . .).

³² *Id.*

"respond" constitutes a "term of art" that should be given a "technical" meaning.³³

If the Legislature had intended courts to attribute a technical meaning to the word "respond," the Legislature would have specifically incorporated a definition of that word into the Act. Although the Public Records Act contains a section in which the Legislature has defined the meanings to several terms used in the Act, the Legislature did not choose to define or attribute such a technical meaning to the word "respond."³⁴

Nevertheless the agency persists, asserting that the Court should interpret the word "respond" as referring to any of the actions set forth in RCW 42.56.520, *including the giving of an estimate of a date for a further response*.³⁵ Thus, the agency suggests that an agency may properly "respond" to a public records request by providing a date at which it will further "respond," on which date it may provide a date at which it will

³³ Response Brief, p. 16, citing *Swinomish Indian Tribal Cmty. V. Wash. State Dep't of Ecology*, 178 Wn.2d 571, 581, 311 P.3d 6 (2013).

The *Swinomish* case cited by the agency does not stand for the proposition for which the agency cites it. In *Swinomish*, the court held:

In general, words are given their ordinary meaning, but when technical terms and terms of art are used, we give these terms their technical meaning.

Id. at 581. The court in *Swinomish* specifically rejected the agency's proposed "technical" construction of ordinary language whose meaning the court found to be plain and unambiguous.

³⁴ RCW 42.56.010.

³⁵ Agency Brief, p. 17.

further "respond," and so on, and so on without there being any obligation on the part of the agency to ever actually fulfill the records request promptly by producing all the records requested. The agency spins a spider's web in which a records requestor can find his or her request endlessly entangled. The Court should reject the agency's novel interpretation, for which it advances absolutely no legal authority.

First, this interpretation is inconsistent with the plain meaning of the statutory language. The agency itself acknowledges that its construction requires the Court to interpret the word "respond" not according to its plain meaning, but to accord it a technical construction at variance with this language's plain meaning.³⁶

Second, the agency's construction of this language is utterly inconsistent with the Legislature's purpose in adopting the Public Records Act. That purpose is to ensure agencies produce records promptly.³⁷ The agency's construction is designed for one end only—to serve the convenience of the agency, which would be entitled to indefinitely postpone fulfilling records requests by providing an endless series of "non-responsive responses."

That is exactly what the agency is doing to Health Pros' request in this case. The agency has to date provided Health Pros with a series of

³⁶ Agency Brief, p. 17.

³⁷ RCW 42.56.080; .100; .520.

such "responses"—all the while refusing to even estimate when it will actually act to fulfill Health Pros' public records request.

The Legislature enacted the Public Records Act specifically so agencies do not usurp the arbitrary right to refuse records requests.³⁸ Were the Court to adopt the agency's construction of the statutory language, the Court would be conferring on agencies the power to *de facto* deny records requests. The agency's construction leads to a result which is the exact opposite of what the Legislature intended when enacting the Public Records Act.

Finally, the agency offers no legal authority or evidence of any kind to suggest that this is how the Act has **ever** been interpreted. To the contrary, as both the Attorney General's model rules, and the Washington Public Records Act Deskbook both clearly suggest, courts and agencies have consistently interpreted this language as requiring agencies to provide an estimate of the time the agency requires **fully** to respond to a public records request.

In sum, the Court should reject the agency's attempt to place a novel "technical" interpretation on this language that is inconsistent with the purpose for which the Legislature enacted the Public Records Act.

³⁸ See RCW 42.56.030.

all of the attorney's fees and costs incurred, both before the trial court, and on appeal.

III. ARGUMENT ON CROSS APPEAL

In its judgment below, the trial court determined that, even under the *Hobbs* court's restrictive interpretation of the language of RCW 42.56.520(1)(c), as requiring the agency only to provide a reasonable estimate of the time the agency will require to produce its initial installment of responsive records, the agency's initial response to Health Pros' public records request failed to comply because the agency failed to provide Health Pros with an estimated date of when it would provide its initial set of records responsive to Health Pros' request.³⁹ Based on its determination, the trial court awarded Health Pros attorney's fees on account of this failure⁴⁰ in an amount to which the parties stipulated.⁴¹

If Health Pros prevails in its argument on appeal, Health Pros will have obtained all the relief it seeks in this action, and it will be entitled to an award of all of its attorney's fees, both before the Superior Court and on appeal. The issue raised by the cross-appeal would become moot, and the Court need not address it.

³⁹ See CP 248.

⁴⁰ CP 248, ¶17.

⁴¹ CP 250, ¶26.

violation.⁴⁶ Because it stipulated to the entry of that order, the agency is not entitled to raise any challenge to the amount of fees the Court awarded.

In sum, if the Court finds for Health Pros with respect to the issues which Health Pros has raised on appeal, Health Pros is entitled to an award of all the attorney's fees it incurred both below and on appeal. The cross-appeal would become moot, and the Court need not address it. But if the Court addresses the issue raised on cross-appeal, it should affirm the trial court's determination that the agency's initial response violated its obligations under RCW 42.56.520(1)(c), even under the narrow interpretation placed on those obligations by the Division II decision in *Hobbs*.

IV. CONCLUSION

The Court should reverse that portion of the otherwise well-reasoned decision of Division II in *Hobbs v. State*, 183 Wn.App. 925, 335 P.3d 1004 (2014), in which the Court of Appeals construed the language of RCW 42.56.520(1)(c), providing that an agency estimate "the time the agency requires to respond to a public records request," as requiring the agency only to estimate the date the agency produces its **initial** set of records. The Court should hold that this language is to be construed as requiring the agency to

⁴⁶ CP 250 (Conclusion, ¶26).

OWENS DAVIES P. S.

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